



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil Gas and Mining

JOHN R. BAZA
Division Director

January 10, 2008

CERTIFIED RETURN RECEIPT
7005 2570 0000 4801 7468

Vern Tharp
Moss Rock Products, LLC
5040 Acoma Street
Denver, Colorado 80216

Subject: Reassessment for Cessation Order MC07-01-15, Moss Rock Products, LLC, Klingon Rock Operations, S/049/060, Utah County, Utah

Dear Mr. Tharp:

The proposed civil penalty assessment for the above referenced cessation order was sent to you on November 30, 2007. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be reassessed when it is necessary to consider facts, which were not reasonably available on the date of the issuance of the proposed assessment. Now that the Cessation Order has been terminated (termination notice enclosed) the assessment can be completed. Following is the reassessment of the penalty for the cessation order:

- MC-07-01-15 Violation 1 of 1 \$1430

The enclosed worksheet specifically outlines how the violation was assessed. You should note that good faith has now been considered and some points were awarded which reduces the penalty.

Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director, Associate Director or assigned conference officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.



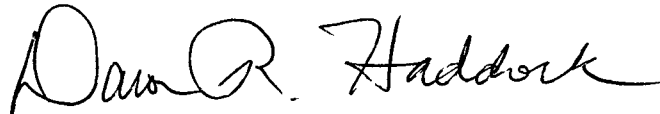
Page 2
Vern Tharp
S/049/060
January 10, 2008

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Thank you for your help in completing these important regulatory requirements. Please call me at (801) 538-5325 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Daron R. Haddock". The signature is fluid and cursive, with the first name "Daron" and last name "Haddock" clearly legible.

Daron R. Haddock
Assessment Officer

Enclosure: Worksheets
Termination of Cessation Order
cc: Vickie Southwick, Exec. Sec.
Vicki Bailey, Accounting
P:\GROUPS\MINERALS\WP\M049-Utah\S0490060-KlingonRock\non-compliance\MC-07-01-15\REAssessment-CO.doc

**WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program**

COMPANY / MINE Moss Rock Products, LLC/ Klingon Rock PERMIT M0490060
NOV / CO # MC-07-01-15 VIOLATION 1 of 1

REASSESSMENT DATE January 10, 2008

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

Mining without appropriate approvals/ Environmental Harm/ Damage to

Property

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to file a notice of intention to commence mining operations with the Division of Oil Gas and Mining prior to conducting mining operations. While a Notice of Intent has been filed with the Division for a small mine, the Operator has not provided a reclamation surety for this property nor received final approval to operate. A small area has been disturbed at this location without the operator having obtained approval to do so or posting a bond. Rock and mineral material has been excavated from the site using mechanized equipment and some rock has been hauled from the site. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 5

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that the Operator was removing rock from the site. Approximately 1 acre had been disturbed at the time of the inspection. Damage would be the loss of resources such as permanent vegetation and soil from the area disturbed. There is potential for sediment to leave the site, but no evidence of impacts off the site was directly observed. The disturbed area is relatively small and the potential for damage is considered minor because the excavation is small and done near the surface. Points are assigned in the lower part of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 25

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector indicated that the operator had been aware of the need to permit this site, however, for some reason the permitting process had not been completed. While the NOI may have been complete, a bond was never posted. A prudent operator would understand the need to complete the permit and post a bond prior to conducting mining operations. This indicates indifference to the rules or lack of reasonable care. The Operator should have been aware of the requirements, especially since this same issue came up in 2006 at the adjacent Barney Mine. The Barney mine is being mined by the same individual that is mining on the Klinton Property and both mines have the same land owner. The indifference to the rules indicates negligence, thus the assignment of points in the mid to upper part of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS -2

PROVIDE AN EXPLANATION OF POINTS:

*** *The abatement for this violation is considered difficult because plans and surety were required to be posted. The inspector assigned an abatement date of November 30, 2007 for the reclamation contract and surety to be posted. This however, did not occur until December 7, 2007, which was actually an extended compliance. The Operator was called and reminded about the deadline to abate the cessation order. There seemed to be some confusion as to who was responsible within the company to complete the abatement requirements. Once the Operator was reminded, steps were taken to quickly complete the abatement. The surety was hand delivered and the Reclamation Contract was sent by overnight mail. Because of the extended timeframe for compliance, it is difficult to award good faith, however, I am awarding 2 good faith points because of the diligence shown (hand delivery and overnight mail) once the operator had been reminded of the requirements.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-07-01-15</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>25</u>
III. TOTAL NEGLIGENCE POINTS	<u>10</u>
IV. TOTAL GOOD FAITH POINTS	<u>-2</u>
TOTAL ASSESSED POINTS	<u>33</u>
TOTAL ASSESSED FINE	<u>\$ 1,430</u>



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**TERMINATION of
Cessation Order**

To the following Permittee or Operator:

Name: Moss Rock Products, LLC
Mailing Address: 5040 Acoma St, Denver CO 80216
Mine Name: Klingon Mine Permit Number: S/049/0060

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Cessation Order No: MC-07-01-15 Dated: November 1, 2007

Part 1 of 1 is ☐ vacated ☒ terminated because: Operator has provided a reclamation contract and a surety for the current disturbance to the Division. Effective date of termination is December 7, 2007, the Day the Division received the reclamation contract and surety.

Date of service/ mailing: January 10, 2008

Lynn Kunzler
Division of Oil, Gas & Mining Representative

Environmental Scientist/Sr. Reclamation Specialist
Title

Signature